

these claims now made against them, which were debts due from the several firms of *Tongue & McPherson*, and from *T. T. McPherson & Co.* of which the late *Thomas Tongue* was a partner, must be postponed in favour of the claims due from the late *Thomas Tongue* in his separate capacity. It is alleged, that this separate estate will be wholly insufficient to pay the debts due from the late *Thomas Tongue* alone; if so, then this postponement will amount to a total rejection of those claims against the several partnerships, as there will be no surplus of this separate estate applicable to them. This direction comprehends claim No. 127, 128, 129, 130, 131, 132, 136 and 143, as to all which the auditor's objections are deemed valid.

It has been urged, as regards claim No. 127, that although it was, in truth, originally only a claim against the firm of *Tongue & McPherson*; yet, that this intestate had, in his life-time, assumed upon himself the payment of it; and had thus made it his own separate debt. It is true, that any one member of a partnership may, by promise or contract, take upon himself the payment of a partnership debt; or the partnership may, in like manner, bind itself to pay a separate debt of any one of its members. But, in this instance, there is no sufficient evidence of any such promise or contract, whereby the late *Thomas Tongue* had made himself separately liable to pay this debt, due from the firm of *Tongue & McPherson*; and therefore the objection against it has not been removed.

Another class of claims are those made by the holders of some accepted bills of exchange. Where a bill has been accepted, the acceptor is considered as the principal debtor, and primarily liable for the whole amount to all others, the drawer, endorsers, and holder. The acceptance is *prima facie* evidence against the acceptor of his having in his hands effects of the drawer; and, therefore, if the fact be not so, it lies upon the acceptor to establish the fact to enable him to recover from the drawer. (m) Hence all these claims founded on bills of exchange drawn by the late *Thomas Tongue*, which had been accepted, must be regarded as claims for which he was not the principal debtor; unless it should be shewn that the acceptor paid it without having in his hands effects of the drawer. And as the drawer and endorsers stand in the relation to each other of a series of sureties, it must be shewn, that each one who stood before, and was, therefore, principal